

REMARKS

Claims 1-4 and 6-8 are pending and have been rejected. A new listing of claims has been provided. The status identifier for claim 4 is now properly indicated as "original," since this claim has never been amended. Applicant respectfully requests reconsideration of the present application in view of the reasons that follow.

Claims 4 and 6-8 are rejected under Section 103(a) based on JP2001—011340 (hereinafter referred to as "the '340 reference") in view of Hawley's Condensed Chemical Dictionary. In addition, the comments following the statement of the rejection reference claims 1-3, so it appears that these claims are included in the rejection.

Claim 1 recites a cosmetic containing a powder comprising a base material, and a metal film and a metal oxide film formed *in this order* on said base material. A metal film exhibits a characteristic metallic luster, and hence a material comprised of a base material powder having a metal film provided thereon can be used as a shiny pigment. However, as taught in applicant's specification, powders having a metal film as the outermost surface have a problem in that the cosmetic may be discolored or degenerated through leaching out of metal ions or the manifestation of a catalytic function. Moreover, metal ions may bring about a metal allergy, and even though precious metals such as platinum and gold do not readily ionize, there have been reports that with uses in which there is direct contact with human skin such as with a cosmetic, a metal allergy may be brought about even though the metal leaches out only very slightly. Accordingly, applicant teaches that "unless the problem of leaching out of metal ions described above is resolved, such a material is not desirable as a material of a cosmetic that is applied directly onto human skin."

As a solution to this problem, applicant teaches application of a metal oxide film on the metal film, whereby the leaching out of metal ions is prevented, without causing a deterioration in the metallic luster of the metal film. The specification makes it clear that the function of preventing leaching out of the metal ions can only be exhibited "so long as the metal oxide film exists further to the outside than the metal film. It is thus necessary for the metal film and the metal oxide film to be formed in this order." Applicant teaches forming the two layers in order. In Examples 1 through 7, glass flakes coated with silver were used as a base material powder having a metal film thereon, and then a silica film was formed on the surface. In Example 8, glass flakes coated with nickel were used as a base material powder having a metal film thereon, and then a zirconia film was formed on the surface.

The examiner urges that the '340 reference discloses a cosmetic containing a powder having a base material of glass flakes coated with a metal film and coated again with a metal oxide film. Hawley's is added merely as a teaching that a noble metal can be gold or platinum. However, the '340 reference does not suggest "a metal film and a metal oxide film formed *in this order* on said base material," as recited in claim 1. To the contrary, the '340 reference deposits the metal film and metal oxide on the base material from a single solution. Thus, Example 8 of the machine translation of the '340 reference discloses that the glass flake "was made to suspend in the titanium-tetrachloride solution which included chloroplatinic acid, and this suspension was heated, it boiled for 1 hour, and the titania coat of various thickness was prepared in the glass flake front face ... the platinum adhering to the glass flake acted as a catalyst." The chloroplatinic acid is the source of the metal film and the titanium-tetrachloride is the source of the titania. The two materials are provided and deposited concurrently on the glass flake, with the platinum acting as a catalyst to aid in adhering the titania to the base material. The '340 reference does not, therefore, suggest "a metal film and a metal oxide film formed *in this order* on said base material," and no *prima facie* case of obviousness can be supported based on the combination of the '340 reference and Hawley's.

While no *prima facie* case of obviousness exists with respect to glass flakes coated with a metal film and a metal oxide film formed *in this order*, a further distinction exists with respect to claim 1. Claim 1 recites that the metal oxide film attached thereon is present in an amount in a range of 0.1 to 30 wt% in terms of weight before formation of said metal oxide film. The specification teaches that this is a result effective variable:

In the case that this attachment ratio is less than 0.1 wt %, the function of preventing the leaching out of metal ions will be prone to becoming insufficient. On the other hand, if the attachment ratio exceeds 30 wt %, then the metal oxide film will be prone to cracking and peeling off. Moreover, there will be an increase in the amount of raw materials used, and hence the cost will rise.

The '340 reference is silent as to the amount of metal oxide that is attached on the glass flakes, and fails to suggest that the amount of metal oxide film is a result effective variable. Thus, the '340 reference fails to teach or suggest an essential feature of the present invention, *i.e.*, that the powder has "the metal oxide film attached thereon in an amount in a range of 0.1 to 30 wt% in terms of weight before formation of the metal oxide film." On this basis also, claim 1 is clearly distinguished over the teaching of the '340 reference in view of Hawley's Dictionary.

Serial No.: 10/627,287

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

If there are any problems with this response, Applicant's attorney would appreciate a telephone call. In view of the foregoing, it is believed none of the references, taken singly or in combination, disclose the claimed invention. Accordingly, this application is believed to be in condition for allowance, the notice of which is respectfully requested.

Respectfully submitted,

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NOVEMBER 14, 2006

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